

# Regulatory Report

## Regulatory News for Virginia Payday Lender and Motor Vehicle Title Lender Licensees

State Corporation Commission-Bureau of Financial Institutions

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The Regulatory Report is published by the Bureau of Financial Institutions and is part of its efforts to improve communication with the companies we regulate. It is distributed to Virginia payday lender and motor vehicle title lender licensees and other interested parties. It is the licensee's responsibility as a Virginia payday lender or motor vehicle title lender licensee to read this newsletter and to be familiar with the positions and interpretations stated herein. We also encourage you to forward the information contained in this newsletter to your employees who are involved in making payday and title loans and meeting compliance standards.

Suggestions and comments concerning the newsletter or its contents should be addressed to the Bureau of Financial Institutions at P.O. Box 640, Richmond, VA 23218-0640 or via email at: [bfquestions@scc.virginia.gov](mailto:bfquestions@scc.virginia.gov).

### Ceasing Payday Lending Business in Virginia

The 2009 legislation and the current state of the economy have prompted many payday lender licensees to consider closing their business entirely or surrendering their license to operate a payday lending business in Virginia. In addition to speaking to your attorney, you may wish to consider the following when making such decisions:

- Should I contact the Bureau if I am considering closing or ceasing business in VA? Notify the Bureau of your intent to close and provide written details of the steps taken to ensure that current borrowers are aware of what locations will remain open to process the payments of outstanding loans. The payday lender must designate an individual that will be responsible for closing the loans in the database after the loan is paid-in-full and returning the original paid note to the borrower.
- Are there outstanding examination issues that still require a response? The surrender of your Virginia license does not release you from your responsibility to correct violations of law or regulation. The main concerns are overcharge violations that warrant reimbursement to borrowers and paid loans not being properly closed in the database. Failure to reimburse borrowers for amount(s) unlawfully collected can lead to the Bureau filing a claim against the licensee's surety bond. A claim may hinder future attempts to obtain a new surety bond. Failure to close a loan in the database will prevent a consumer from obtaining another payday loan.
- Have all consumer complaints been properly addressed and resolved? Surrendering your Virginia license does not relieve you of the responsibility of posting payments correctly to a consumer's account, correcting errors and refunding overpayments, or closing

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### Rescission of a Motor Vehicle Title Loan

Motor Vehicle Title Lending licensees must return the borrower's certificate of title at the time the borrower properly exercises his or her right to cancel a title loan (i.e., rescind) as allowed by § 6.2-2215 (1)(c) of the Code of Virginia. When a consumer rescinds a title loan, the loan agreement becomes void. A rescinded loan is not satisfied, it is as if the loan agreement was never formed. Virginia Regulation 10VAC5-210-50J states that "If a borrower cancels a loan agreement in accordance with this subsection, the licensee shall upon receipt of loan proceeds check, cash, or good funds instrument (i) mark the original loan agreement with the word 'canceled,' return it to the borrower, and retain a copy in its records; and (ii) return the certificate of title to the borrower." To avoid the risk of violating Subsection J, a licensee may elect to wait until after the expiration of the rescission period (close of business of the next business day following the day the loan agreement is executed) to send its certificates of title to DMV for recordation. Section 6.2-2215 (11) of the Code of Virginia requires a licensee to file to have its security interest in the motor vehicle added to the certificate of title within seven days following the date of the loan agreement, or for motor vehicles registered outside of Virginia, to comply with that state's requirements for perfecting a security interest.

## Motor Vehicle Title Lender Tips & Reminders

- Within 30 days of the licensee's receipt of funds from the sale of a motor vehicle, the licensee must give the borrower all proceeds in excess of the principal amount due to the licensee; interest accrued through the date the licensee took possession; and the reasonable expenses incurred by the licensee in taking possession of, preparing for sale, and selling the motor vehicle (Reference § 6.2-2217 C of the Code of Virginia).
- A motor vehicle title lender shall not obtain any agreement from the borrower giving the licensee or any third person **power of attorney** or authority to confess judgment for the borrower. This includes the DMV's "Power of Attorney to Sign for Owner When Registering and/or Transferring Ownership of a Motor Vehicle" form (Reference § 6.2-2215(5)).
- Within 10 days after a borrower's obligations under a motor vehicle title loan agreement are satisfied in full, a licensee must return the original loan agreement marked "paid" or "canceled" to the borrower; take any action necessary to reflect the termination of its lien on the motor vehicle's certificate of title; return the certificate of title to the borrower; and retain a copy of both the original loan agreement marked "paid" or "canceled" and the certificate of title for the motor vehicle. If the payment that satisfied the motor vehicle in full is paid in person with cash, the licensee must also give the borrower a signed, dated receipt which must state a zero balance and retain a copy of the receipt in its records {Reference § 6.2-2215 (3 & 13) and Virginia Regulation 10VAC5-210-50}.
  - A motor vehicle title lender must take a new application each time a consumer requests a motor vehicle title loan. The application must clearly and conspicuously include questions to determine if the prospective borrower (i) has an outstanding motor vehicle title loan from the same licensee or another licensee; (ii) is a covered member of the armed forces; (iii) is a dependent of a covered member of the armed forces; and (iv) repaid or satisfied in full a motor vehicle title loan on the same day the prospective borrower is applying for a motor vehicle title loan. The applicant must answer these questions in writing when submitting an application for a motor vehicle title loan (Reference Virginia Regulation 10VAC5-210-50 D).



## Payday Lender Compliance Tips

- Prior to furnishing a prospective borrower with a loan application or receiving any information relating to loan qualification, a licensee must provide each prospective borrower with a printed notice which states the following: "WARNING: A payday loan is not intended to meet long-term financial needs. It is recommended that you use a payday loan only to meet occasional or unusual short-term cash needs." The requirement to provide this printed notice prohibits a licensee from taking a loan application over the phone (Reference Virginia Regulation 10VAC5-200-30 B).
- When a payday loan is paid or otherwise satisfied in full, a licensee must, among other things, return the original loan agreement marked "paid" or "canceled" to the borrower along with a signed, dated receipt reflecting a zero balance; retain a copy of both the original loan agreement marked "paid" or "canceled" and the signed, dated receipt issued to the borrower; and on the date of payoff, mark the loan as closed in the database by the close of business {Reference § 6.2-1816 (17) & 6.2-1810B (5)}.
- A licensee must photocopy the applicant's original unexpired driver's license or identification card each time an application is submitted to the licensee by a prospective borrower. A payday loan shall not be made or a query made to the database to determine eligibility unless the prospective borrower submitted an application to the licensee for a payday loan (Reference Virginia Regulation 10VAC5-200-110) .
- A licensee must immediately update or correct the Virginia Payday Lending Database when becoming aware of any changes, inaccuracies, or other errors in the information previously verified or transmitted by the licensee to the database {Virginia Regulation 10VAC5-200-110



## License Update

The following is a list of companies that have had their licenses revoked, had an application denied, or entered into a settlement agreement since April 1, 2010. These lists are accurate as of October 1, 2011. Call the Bureau if you have a question concerning a recent denial, revocation or settlement entered into by the Commission. A list of current payday lender and motor vehicle lender licensees is available on our Web site at: <https://www.scc.virginia.gov/bfi/index.aspx> (under Regulated Institutions click on “Motor Vehicle Title Lenders” or “Payday Lenders”).

### Payday Lender or Motor Vehicle Title Lender Licenses Revoked or Denied

None

### Payday Lender Settlement Orders

PL-22 Buckeye Check Cashing of Virginia, Inc. d/b/a Check\$mart

- settlement order entered 6/29/10. Paid \$25,000 for various violations of Chapter 18 of Title 6.1 (now known as Chapter 18 of Title 6.2) of the Code of Virginia
- settlement order entered 8/23/11. Paid \$30,000 for various violations of Chapter 18 of Title 6.2 (formerly Chapter 18 of Title 6.1) of the Code of Virginia

PL-42 Express Check Advance of Virginia, LLC d/b/a Express Check Advance – settlement order entered 11/23/10. Paid \$55,000 for various violations of Chapter 18 of Title 6.2 (formerly Chapter 18 of Title 6.1) of the Code of Virginia

PL-115 Ace Cash Express, Inc. – settlement order entered 12/29/10. Paid \$150,000 for various violations of Chapter 18 of Title 6.2 (formerly Chapter 18 of Title 6.1) of the Code of Virginia

PL-113 Approved Cash Advance Centers (Virginia), LLC d/b/a Approved Cash Advance – settlement order entered 3/30/11. Paid \$120,000 for various violations of Chapter 18 of Title 6.2 (formerly Chapter 18 of Title 6.1) of the Code of Virginia

PL-46 F&L Marketing Enterprises, LLC d/b/a Cash-2-U Payday Loans – settlement order entered 8/24/11. Paid \$40,000 for various violations of Chapter 18 of Title 6.2 (formerly Chapter 18 of Title 6.1) of the Code of Virginia

### Motor Vehicle Title Lender Settlement Orders

Brar, Inc. – settlement order entered 4/26/11. Paid \$10,000 for making motor vehicle title loans without a license in violation of § 6.2-2201 of the Code of Virginia

## Please Distribute!

We receive numerous phone calls from branch personnel with questions regarding changes in the laws, regulations and/or items clarified in issues of this newsletter. We refer callers to sections of the law, regulations, or the newsletter, but are often told that they did not receive a copy. Licensees should be aware that mailings from the Bureau are sent only to the main office. Branches are not included in the Bureau’s mailing list and do not receive mailings from the Bureau. It is the responsibility of the licensee’s main office personnel to distribute this information to all affected branches and employees. Additional copies of the law books may be obtained by contacting the publisher, LexisNexis Matthew Bender & Company at 1-800-446-3410. Virginia Regulations, Administrative Letters and issues of this newsletter are available on our web site (<https://www.scc.virginia.gov/bfi/admin.aspx>) and may be copied or reprinted for distribution to others. We do ask, however, that information be copied or reprinted in their entirety, to alleviate the potential for items to be taken out of context. **Please make sure all personnel are provided the opportunity to stay current with all regulatory issues since failure to do so could result in violations of law or regulation and the possibility of regulatory action.**



## Ceasing Payday Lending Business in Virginia? (continued from page 1)

ing out paid-in-full loans in the database. Consumer complaints must be properly addressed and, when necessary, corrections made. A company's failure to close a loan in the database will prevent a consumer from obtaining another payday loan and failure to refund any overcharges related to a consumer complaint could result in a claim against the company's surety bond.

- How will the company notify consumers about the closure? (When?) Prior to surrendering its license, the company should provide details to its borrowers about the office closing, where to make payments on their outstanding loans, and who to contact if they have questions about their account.
- Where will the files be stored? Licensees should notify the Bureau where the business records will be stored and who can be contacted should there be the need to review records (contact name, phone number, email address, etc.). Once records no longer need to be retained pursuant to Virginia Regulation 10 VAC 5-200-70 D, the payday lender must safeguard the privacy of consumers' personal financial information by properly disposing of the documents (e.g.: shredding, incinerating, or utilizing other secure methods).

Now that the decision is made, did I provide the required notification to the Bureau? Section 6.2-1807 D of the Code of Virginia requires licensees to provide written notification within 10 days of the date of closing any office or offices. In addition, the original licenses for the main office and any additional offices must be returned to Nick Kyrus of the Bureau's Corporate Structure and Research (Licensing) Section.

We have received several calls from payday lenders inquiring about putting their license in an "inactive" status. Although there is no official status of this type, the licensee can continue to hold the license even if no Virginia business is conducted, if it files the required annual report in a timely manner (§ 6.2-1811 of the Code of Virginia), pays the annual fee by October 15 (§ 6.2-1814 of the Code of Virginia), and responds to inquiries by the Bureau regarding any examinations required. Commission approval to relocate an office (whether active or not) is required prior to the relocation of a licensed location.

## Recodification Effective October 1, 2010

Title 6.1 Banking and Finance is now known as Title 6.2 Financial Institutions and Services, effective October 1, 2010. If you attempt to search for a statute from Title 6.1, it will show the section was repealed. This does not mean the prohibitions or requirements stated in those statutes are no longer in force. Statutes in Title 6.1 have been renumbered and most are now found in Title 6.2.

The Bureau's website (<http://www.scc.virginia.gov/bfi/admin.aspx>) now includes links to conversion charts - one that shows the "old" Title 6.1 statute and the corresponding "new" Title 6.2 code section and a second chart specifically for those chapters related to Bureau regulated *non-depository financial institutions* only.



**Reminder:** Licensees should review their agreements, notices, endorsement stamps, etc. to make sure they include the correct Title 6.2 references.

The newsletter formerly known as the Payday Press is now titled the Regulatory Report. Since the General Assembly passed laws requiring the licensing of motor vehicle title lenders, we renamed the Payday Press to include issues related to this new Virginia regulated industry.



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